

M o t i v a t i o n .

As defendant of Matr. Obergefreiten Schwender I beg to submit the following against the sentence of October 20th 1945:

The sentence has not sufficiently considered the following items:

- 1.) Schwender was only 19 years old.
- 2.) He was only a simple sailor.
- 3.) He could practically make no objections whatsoever against the order of the commander.
- 4.) He feared that the commander would enforce his order by force of arms.
- 5.) Schwender has not killed any human being and never had the intention to do so.
- 6.) He has strictly obeyed the order given to him and has only shot at a piece of wood.
- 7.) In the moon-light he saw this piece of wood at a distance of 30 meters and had convinced himself that there was no human being either at or on the wood.
- 8.) If he had seen any human being at or on the piece of wood he would not have shot, because the order given to him was to shoot at a piece of wood and he as simple soldier adhered strictly to this order.
- 9.) Schwender therefore cannot have taken part in the killing of members of the crew of the ss. "Peleus".

Schwender in prison after being sentenced expressed himself as follows :

" The facts of the sinking on March 13th 1944 as it appeared to me :

When the torpedoes were fired I was in the bow-part on my action station. After the detonation I was occupied in the re-loading of torpedoes etc. until almost midnight. I then went into the tower and was standing there quite a while when suddenly it was reported from the bridge: " one MG does not work, bring immediately a new one to the bridge". As I was the only rating in the tower besides the " Gefechtsrudergänger" I brought the demanded MG. to the bridge. There I placed it into the destined hold and wanted to leave the bridge again because I consider my mission as finished. Thereupon the commander who stood beside me gave me the order " Schwender, shoot at the pieces of wreckage!" I then chose a piece of wreckage at and on which no human being was and could not be, otherwise I would have been able to see him in the moonlight, and fired at the mentioned piece. However, already during the first burst of fire a stoppage developed which I immediately

removed. When I had my weapon clear again and was just aiming at my target Kapitänleutnant LENZ pushed me aside in order to shoot himself. I immediately left the bridge because I considered my order as finished. When I arrived at the tower I relieved my comrade Rümmler at the rudder.

At that time as well as to-day I cannot see anything unlawful or anything punishable in my way of action. At the time of sinking the "Pelaus" I was 19 years old and hardly 2 years a soldier."

Schwender was bound to the order given to him. The order to shoot at a piece of wood had legal obligation for him. In this order it was not demanded to commit a punishable act. Schwender therefore had to execute this order. Nobody can deny the generally recognized obligation of a soldier towards the order. Nobody can expect from a subordinate to refuse orders which the own right declares as binding and to risk punishment by martial law or the immediate use of arms by the commanding superior. Schwender therefore was in a state of emergency. When he received the order there was no possibility for him but to execute the order, otherwise he was certain to experience one of the two other possibilities :

- 1.) After returning from enemy patrol the commander placed him before a court-martial owing to military disobedience before the enemy, or
- 2.) The commander shot him on the spot to keep up the discipline on the U-boat.

If Schwender did the only thing which was possible for him to do, namely if he executed the order, he also came, as is shown now, before the court of the allied forces and is found guilty as war-criminal.

It cannot be denied that Schwender was in a state of emergency which must excuse him to the highest degree. The motion in the proceedings to acquit Schwender is therefore well founded.

Should notwithstanding the punishment of Schwender be necessary the pleas brought forward justify a considerable diminution of his prison-sentence. Schwender who has never been sentenced

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before, now has as a young man a punishment of 15 years imprisonment in front of him. This means that he would leave prison completely broken in body and soul if he should live that long at all.

The defendant:

Hamburg, 26th of Oct.1945.

F. Paul